

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Donna Braun o/b/o,
Leisa Braun, Deceased,

Plaintiff,

v.

Nancy A. Berryhill, Acting
Commissioner of Social Security
Administration,

Defendant.

Civil Action No. 5:14-65-BHH

ORDER

On May 31, 2017, Harry F. Smithson, counsel for Plaintiff, filed a motion for attorney's fees pursuant to 42 U.S.C. § 406(b). (ECF No. 36.) In the motion, counsel requests reimbursement for representation provided in the above-referenced case in the amount of \$16,351.34.

As required by 42 U.S.C. § 406(b), the amount requested by counsel is not greater than twenty-five percent (25%) of the past-due benefits recovered by Plaintiff. Counsel for the Acting Commissioner of Social Security ("Commissioner") filed a response to the motion on June 12, 2017, in which she states that the Commissioner does not oppose counsel's motion for attorney's fees under § 406(b). (ECF No. 38.) The Court has reviewed the motion and exhibits and finds that counsel's request for fees is reasonable.

Accordingly, it is ORDERED that Plaintiff's motion for attorney's fees (ECF No. 36) pursuant to the Social Security Act, 42 U.S.C. § 406(b), is GRANTED in the amount of \$16,351.34. Any remaining benefits will be released directly to Derek Braun, the personal representative of Plaintiff's estate. Also, upon receipt of the § 406(b) attorney's fees,

Plaintiff's counsel shall remit to Plaintiff the \$4,000.00 in attorney's fees already awarded under the Equal Access to Justice Act, 28 U.S.C. § 2412(d). See *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (noting that fees may be awarded under both § 406(b) and EAJA but that the claimant's attorney must refund to the claimant the amount of the smaller fee) (internal quotations and citation omitted); *Astrue v. Ratliff*, 130 S.Ct. 2521, 2528 (2010).

IT IS SO ORDERED.

/s/Bruce Howe Hendricks
United States District Judge

June 13, 2017
Charleston, South Carolina